



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Patent Cooperation Treaty Legal Office

01 JUN 2000

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

Mark B. Wilson
ARNOLD, WHITE & DURKEE
P.O. BOX 4433
Houston, Texas 77210-4433

In re Application of :
PARMACEK et al. :
U.S. Application No. 09/380,928 :
PCT No.: PCT/US97/16204 : **DECISION ON REQUEST**
Int. Filing Date: 29 August 1997 :
Priority Date: 07 October 1996 :
Attorney Docket No. ARCD: 333/WIM :
For: **PROMOTER FOR SMOOTH MUSCLE CELL** :
EXPRESSION :

This is a decision on applicants' "Request for Refund of Fees" which is being treated as a Petition under 37 CFR 1.26 filed in the Patent and Trademark Office (PTO) on 22 September 1999.

BACKGROUND

Applicant states in the "Request for Refund of Fees" that "[o]n September 9, 1999, a Petition for Revival of International Patent Designating the U.S. Abandoned Unintentionally Under 37 1.137(b) as well as a Transmittal Letter to the U.S. Designated/Elected Office were filed for the above referenced application. Inadvertently, an incorrect International Application Number of PCT/US97/62101 was listed instead of the correct International Application Number of PCT/US97/16204 on both the Petition and the Transmittal Letter." These papers were stamped with serial number **09/380,928**.

On 22 September 1999, applicant filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, inter alia, by: the basic national fee; an international search report; and petition seeking revival under 37 CFR 1.137(b) with the appropriate fee; and a request for refund of fees. These papers were stamped with serial number **09/381,750**.

On 17 April 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was omitted and additional claim fees of \$636 as a large entity, including any required multiple dependent claim fee, were required. The notification set a ONE (1) MONTH period for response.

DISCUSSION

37 CFR 1.26 provides, in part: (a) Any fee paid by actual mistake or in excess of that required will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return.

Applicant states in the 22 September 1999 Request for Refund that "[i]nadvertently, an incorrect International application number of PCT/US97/62101 was listed instead of the correct International Application Number PCT/US97/16204 on both the Petition and Transmittal letter . . . To avoid any confusion occurring as the result of the incorrect application appearing on the Petition and Transmittal letter filed Sept. 9, 1999 we are refiling the Petition for Revival . . . " A review of the finance record for application no. 09/381,750 reveal that applicant has submitted the following fees:

- 1) \$970 (fee code 960)
- 2) \$130 (fee code 154)
- 3) \$594 (fee code 966)
- 4) \$312 (fee code 964)
- 5) \$1210 (fee code 141)
- 6) \$358 (fee code 198)

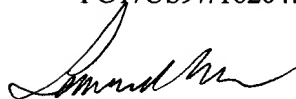
Under 37 CFR 1.26, applicants Deposit Account No. 01-2508 will be credited \$3,574.00.

CONCLUSION

The request for refund is GRANTED, and the Notification of Missing Requirements (Form PCT/DO/EO/905) dated 17 April 2000 is hereby VACATED.

The application papers filed on 09 September 1999 have been removed from **09/380,928** and placed in application folder **09/381,750**.

Applicant should use application number **09/381,750** in all future communications with the Patent and Trademark Office (PTO) in regards to the U.S. national stage of international application PCT/US97/16204.



Leonard Smith
Legal Examiner
PCT Legal Office



Anthony Smith
Petitions Attorney
PCT Legal Office
Tel: 703-308-6314
Fax: 703-308-6459